



San Diego City Attorney **MICHAEL J. AGUIRRE**

NEWS RELEASE

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\$1 MILLION SETTLEMENT OF FALSE ADVERTISING CASE AGAINST MAKERS OF DIET PRODUCT *XENADRINE RFA-1*

San Diego, CA: The City Attorney's Office, the California Attorney General's Office, along with nine District Attorneys in California announced today a \$1 million settlement of a lawsuit against Cytodyne Technologies, now known as Nutraquest, Inc., and its president Robert Chinery. The most recent civil complaint filed in the action alleged that Cytodyne and Chinery deceptively advertised Xenadrine RFA-1, the company's best-selling diet pill that contained ephedra. According to court papers, Cytodyne deceptively claimed, that Xenadrine "is a revolutionary thermogenic diet supplement clinically proven to increase fat-loss by an astounding seventeen times more than diet and exercise alone," it is "clinically proven to increase fat-loss by an unprecedented 1700%", and it is "the only diet supplement in the world clinically proven to increase fat loss by an extraordinary 38.6 times more than diet and exercise alone".

According to San Diego Deputy City Attorney Joan McNamara of the Consumer and Environmental Protection Unit, a final judgment has been entered against Cytodyne and Chinery, which orders Chinery to pay \$600,000 in civil penalties and \$400,000 in costs to the eleven prosecuting offices. Further, it prohibits the defendants from making advertising claims about the health benefits, performance, effectiveness, safety or side effects of any weight-loss product unless the claim is true, not misleading, and is based upon competent and reliable scientific evidence that proves such claim. Additionally, the judgment prohibits them from using endorsements or testimonials in advertisements unless the testimonial or endorsement of any weight-loss product represents the user's or endorser's actual experience that resulted from using the product.

The judgment also recognizes that persons who purchased Xenadrine will be provided with restitution in the cases of *Jason Park v. Cytodyne*, Case No. GIC 768364, and *Richard Markowitz v. Cytodyne*, Case No. 03-02980, pursuant to settlement agreements approved by the United States District Court for the District of New Jersey in the bankruptcy matter, *In re Nutraquest, Inc.*, Case Number Civil No. 06-202 (GEB).

Nutraquest filed for bankruptcy protection in 2003 after a number of lawsuits were filed against the company alleging health and medical problems. Last July, Nutraquest, Chinery and three other companies agreed to pay the New Jersey Attorney General nearly \$1 million to settle a lawsuit that charged them with deceptive advertising.

The nine district attorneys who prosecuted this case are from Alameda, Kern, Marin, Monterey, Napa, San Benito, San Francisco, Solano and Sonoma Counties.

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